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March 15, 2010

Donna Napalitano, Esq.  
Deputy Bureau Chief  
Nassau County Attorney Office  
One West Street  
Mineola, New York 11501-4820

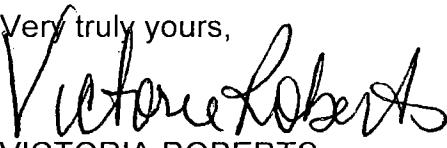
Re: Darryl T. Coggins v County of Nassau, et al.  
Docket No.: 07-CV-3624(JFB)(AKT)

Dear Ms. Napalitano:

Enclosed please find the original and one copy of the testimony of Nicholas Occhino, taken at an examination before trial on February 25, 2010 in the above-referenced matter.

Please have the witness execute the original and return to us as soon as possible. Please note that any necessary changes are to be made on a separate sheet of paper and notarized, with the reason for the change or correction set forth. The copy is for your files.

Please note that if the original is not signed and returned to us within thirty days of the date hereof, we shall utilize the same at trial as if signed and sworn to.

Very truly yours,  
  
VICTORIA ROBERTS  
Legal Assistant

Enclosures

:vr

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Mineola, New York 11501-4820

Re: Darryl T. Coggins v County of Nassau, et al.  
Docket No.: 07-CV-3624(JFB)(AKT)

Dear Ms. Napalitano:

During the depositions of Defendants Alexander J. Barnych and Nicholas Occhino, request for documents were made. To-date, we have no record of receiving the requested documents. Please allow this to serve as a formal written demand for documents. Requests were made as follows:

- **Defendant Alexander J. Barnych deposed February 25, 2010:**  
Page 79: complete records of Internal Affairs Unit;  
  
Page 91: document relating to vouchering of gun and magazine by Nassau County of Floral Park Police Departments;  
  
Page 94: any photographs of gun, car or anything else taken at the time of the event; and  
  
Page 99: case file.
- **Defendant Nicholas Occino deposed February 25, 2010:**  
Page 85: entire file of Internal Affairs Unit.

As quite some time has passed since these requests were made, it would be greatly appreciated if this matter were given your immediate attention.

Thank you for your cooperation. We look forward to hearing from you in the near future.

Very truly yours,  
  
VICTORIA ROBERTS  
Legal Assistant

Enclosures  
.vr

COPY

1

1

2 UNITED STATES DISTRICT COURT  
3 EASTERN DISTRICT OF NEW YORK

-----x

3

DARRYL T. COGGINS,

4

Plaintiff,

5

- against -

6

COUNTY OF NASSAU, NASSAU COUNTY POLICE  
7 DEPARTMENT, POLICE OFFICER JAMES VARA,  
8 in his individual and official capacity,  
and POLICE OFFICER CRAIG BUONORA, in his  
individual and official capacity, and  
9 JOHN DOES "1-10," in their individual  
and official capacity,

10

Defendants.

11

Docket No. 07-CV-3624

-----x

12

13 50 Clinton Street  
Hempstead, New York

14

February 25, 2010  
15 10:20 a.m.

16

17 Deposition of the Defendant, NASSAU  
18 COUNTY POLICE DEPARTMENT by NICHOLAS OCCHINO,  
19 pursuant to Notice, before Jennifer Fuchs, a  
20 Notary Public of the State of New York.

21

22

REALTIME REPORTING, INC.  
124 East Main Street, Suite 202  
Babylon, New York 11702  
24 516-938-4000

25

1

A P P E A R A N C E S:

3

LAW OFFICES OF FREDERICK K. BREWINGTON

4

Attorney for Plaintiff

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50 Clinton Street, Suite 501

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Hempstead, New York 11550

7

BY: IRA FOGLGAREN, ESQ.

8

9

DONNA NAPOLITANO, ESQ.

10

Deputy Bureau Chief

11

Attorney for Defendants County of Nassau,

12

Nassau County Police Department and Police

13

Officer James Vara

14

Nassau County Attorney

15

One West Street

16

Mineola, New York 11501

17

18

LAW OFFICES OF LAURENCE JEFFREY WEINGARD, ESQ.

19

Attorney for Defendant Police Officer Craig

20

Buonora

21

250 West 57th Street, Suite 401

22

New York, New York 10107

23

BY: LAURENCE JEFFREY WEINGARD, ESQ.

24

25

1

IT IS HEREBY STIPULATED AND

2

AGREED by and between the attorneys for  
the respective parties herein, that the  
filing, sealing and certification of the  
within deposition be waived.

3

4

5

6

7

IT IS FURTHER STIPULATED AND

8

9

10

AGREED that all objections, except as to  
the form of the question, shall be  
reserved to the time of the trial.

11

12

13

14

15

16

IT IS FURTHER STIPULATED AND

AGREED that the within deposition may be  
sworn to and signed before any officer  
authorized to administer an oath with  
the same force and effect as if signed  
and sworn to before the Court.

17

18

19

- 000 -

20

21

22

23

24

25

1

N I C H O L A S     O C C H I N O ,     called as a  
witness, having been duly sworn by a  
Notary Public, was examined and  
testified as follows:

6

EXAMINATION BY

7

MR. FOGELGAREN:

8

Q.     Please state your full name for  
the record.

10

A.     Nicholas Occhino.

11

Q.     What is your address?

12

A.     1490 Franklin Avenue, Mineola,  
New York 11501.

14

Q.     Good morning, Mr. Occhino.

15

A.     Good morning.

16

Q.     My name is Ira Fogelgaren. I  
represent the plaintiff, Darryl Coggins, in  
this action. I am going to be asking you some  
questions about the facts and circumstances in  
this lawsuit.

21

If at any time you don't  
understand my question, please let me know,  
and I will try and rephrase it as best I can.  
Please keep your answers verbal. The reporter  
cannot take down nods of the head. Please

25

5

1 Occhino

2 wait for me to finish my questions before you  
3 start your answers. She can't take down both  
4 of us speaking at the same time. Is that  
5 okay?

6 A. Yes.

7                   Q.         If at any time you need a break,  
8                   let me know, and we will accommodate you.

9 Are you employed currently?

10 A. Yes.

11 Q. Where are you employed?

12 A. Nassau County Police Department.

13 Q. When did you first start  
14 employment at the Nassau County Police  
15 Department?

16 A. October 19, 1990.

17 Q. What position do you currently  
18 hold with the Nassau County Police Department?

19 A. Detective.

20 Q. How long have you been a  
21 detective?

22 A. Approximately nine years.

23 Q. Are you assigned to a certain  
24 squad at the present time?

25 A. Yes.

6

Occhino

1 Q. Which one?

2 A. The District Attorney Squad.

3 Q. How long have you been with the

4 District Attorney Squad?

5 A. Approximately six months.

6 Q. What are your duties at the

7 District Attorney Squad?

8 A. We conduct wiretaps and

9 undercover operations.

10 Q. Prior to being on the District

11 Attorney Squad, where were you assigned prior

12 immediately prior, to that?

13 A. The 3rd Squad.

14 Q. From when to when were you on the

15 3rd Squad?

16 A. I was there approximately six

17 years.

18 Q. Were you a detective that entire

19 time?

20 A. Yes.

21 Q. What were your duties at the 3rd

22 Squad?

23 A. General duties, respond to

24 scenes, interview persons, whether that be

1

Occhino

2

witnesses, victims, arrest offenders.

3

Q. Were you working in the 3rd Squad

4

on October 9, 2004?

5

A. Yes.

6

Q. Prior to being in the 3rd Squad,

7

where were you assigned?

8

A. The 7th Squad.

9

Q. Do you recall from when to when?

10

A. I was there just shy of three

11

years.

12

Q. Do you recall what your duties  
were at the 7th Squad?

13

A. The same as the 3rd Squad,  
respond to scenes, arrest offenders, interview  
people.

14

Q. Where were you assigned prior to  
the 7th Squad?

15

A. The Bureau of Special Operations.

16

MR. WEINGARD: Can I just

17

interrupt?

18

How many years were you at the

19

7th?

20

THE WITNESS: Approximately three

21

years, perhaps a little bit less.

22

8

Occhino

2 Q. Were you a detective when you  
3 were at the Bureau of Special Operations?

4 A. No.

5 Q. What position did you have at  
6 that time?

A. Police officer.

8 Q. What were your duties at the  
9 Bureau of Special Operations?

10                   A.         We were the SWAT team.  We  
11                   responded to barricades and emergency  
12                   situations, and we also did street-level  
13                   crimes, drugs, narcotics.

14 Q. I'm sorry. Did you say for how  
15 long you were at the Bureau of Special  
16 Operations?

17                   A.         Approximately a little over three  
18                   years.

19 Q. Where were you assigned prior to  
20 that?

21 A. The 7th Precinct.

Q. Do you recall from when to when?

23                   A.         From sometime in 1991 to sometime  
24                   in 1997.

Q. What were your duties there?

1

Occhino

2

A. General patrol duties. I also  
worked plainclothes.

4

Q. Did you have an assignment with  
the Nassau County Police Department prior to  
that one, prior to being at the 7th Precinct?

7

A. Well, I was in the police

8 academy.

9

Q. Which police academy did you

10 attend?

11

A. Nassau County.

12

Q. When did you attend the Nassau  
County Police Academy?

14

A. Well, I was hired October 19,  
1990, so I started the police academy shortly  
thereafter.

17

Q. What's your date of birth?

18

A. February 5, 1962.

19

Q. What's your highest level of  
education?

21

A. Associate degree.

22

Q. From where?

23

A. Nassau Community College.

24

Q. When did you get it?

25

A. I'm trying to think.

10

1 Occhino

2 Q. If you can't remember --

3 MR. WEINGARD: We can leave a

4 blank, and you can fill it in.

5 A. I could only speculate.

6 MS. NAPOLITANO: Don

7 You know or you don't know.

8 MR. WEINGARD: We will

11 | TO BE FURNISHED: \_\_\_\_\_

Q. What was the degree in?

13 A. General studies.

14 MR. WEINGARD: Is that like a  
15 liberal arts degree?

16 THE WITNESS: Yes, yes.

17 MS. NAPOLITANO: Can I just, you  
18 know, Ira, this is your deposition, I  
19 understand, but I prefer for one  
20 attorney to ask questions at a time.

21 MR. FOGELGAREN: Okay.

22 MR. WEINGARD: I assume that's  
23 directed to me.

24 MS. NAPOLITANO: Yes, sir.

25 MR. WEINGARD: And I certainly

1 Occhino

2 will try to do that.

3 MS. NAPOLITANO: Thank you.

4 Q. Have you worked for any other law  
5 enforcement agencies?

6 A. No.

7 Q. Were you in the military?

8 A. No.

9 Q. Have you ever been disciplined  
10 while you were employed by the Nassau County  
11 Police Department?

12 MS. NAPOLITANO: Objection to  
13 form.

14 You can answer.

15 A. I don't understand that question.

16 Q. Has anybody ever made complaints  
17 or have you ever received any complaints about  
18 your performance as a police officer while you  
19 were serving for the Nassau County Police  
20 Department?

21 A. That's possible. I don't recall  
22 any specifics.

23 Q. Do you recall if you were ever  
24 disciplined as a result of any possible  
25 complaints?

12

1 Occhino

2 MS. NAPOLITANO: Objection.

3 You can answer.

4 THE WITNESS: I'm sorry?

5 MS. NAPOLITANO: I objected. You  
6 can answer.

7 THE WITNESS: Can you repeat  
8 that?

9 Q. Have you ever been disciplined as  
10 a result of any complaints made against you as  
11 a police officer/detective at the Nassau  
12 County Police Department?

13 A. I recall I received a Form 59  
14 once.

15 Q. What's a Form 59?

16 A. It's an in-house form.

17 Q. What was that for?

18 A. When I was on patrol in the 7th  
19 Precinct, I was involved in an auto accident.

20 MR. WEINGARD: I'm sorry?

21 THE WITNESS: When I was on  
22 patrol in the 7th Precinct, I was  
23 involved in an auto accident.

24 Q. Did you ever receive any training  
25 as a police officer in securing a crime scene?

1

Occhino

2

A. I would have received that

3

training for detective.

4

Q. Where would you have received

5

that training?

6

A. That would be on the job, learn as you go, and I may have received some sort of training regarding that in the police academy.

10

Q. Did you receive any training - and again, this is all with regard to your employment with the Nassau County Police Department - with regard to securing firearms recovered at crime scenes?

15

A. I would have also received training in detective school. I do not recall any specific training regarding specifically firearms.

19

Q. Now, you said "detective school." Was there a specific detective school that you attended?

22

A. When you make the rank of detective, they send you for a few weeks of classroom-type training.

25

Q. Where was that, if you can

1 Occhino

2 remember?

3 MR. WEINGARD: Can we go off the  
4 record for a second?

5 (Discussion off the record.)

6 A. I believe it was at the police  
7 academy.

8 MR. WEINGARD: That's your best  
9 memory.

10 THE WITNESS: Yeah, it wasn't in  
11 a non-police facility. Yes, the police  
12 academy.

13 Q. Did any of that training consist  
14 of securing crime scenes?

15 A. I believe so, yes.

16 Q. Did any of that training consist  
17 of securing of firearms recovered at crime  
18 scenes?

19 A. Once again, I don't recall those  
20 specifics regarding a firearm.

21 Q. On October 9, 2004, were you  
22 aware if there was a procedure at the Nassau  
23 County Police Department with regard to  
24 securing a crime scene?

25 A. I could assume that's the date in

1

Occhino

2

question?

3

MR. FOGELGAREN: Yes.

4

5

A. Can you repeat that question

again, please?

6

7

Q. On that day, were you aware if  
the Nassau County Police Department had a  
procedure for securing crime scenes?

9

10

A. I could only assume there is a  
procedure.

11

12

13

MS. NAPOLITANO: I don't want you  
to assume. If you don't know, you don't  
know. Don't assume.

14

15

16

Q. Do you have any recollection, if  
there was a procedure for securing crime  
scenes as of that time, what it was?

17

18

A. I don't know of any specific  
procedures.

19

20

21

22

Q. Did you have a custom and  
practice at that time as to how you would  
secure a crime scene as a detective in the  
Nassau County Police Department?

23

24

MS. NAPOLITANO: Objection as to  
form. Do you mean he himself?

25

MR. FOGELGAREN: Yes.

1

Occhino

2

MS. NAPOLITANO: Separate from

3

the police department?

4

MR. FOGELGAREN: He himself as a

5

member of the police department, yes.

6

A. Yes.

7

Q. What was that?

8

A. If I may speak, it's -- that question can't be answered in and of itself, because every crime scene is different, and you approach every scene and every situation differently.

13

Q. Do you have any recollection of the events of October 9, 2004?

15

A. Some.

16

Q. What do you recall?

17

A. I recall I was working that day.

18

Q. Do you recall what shift you were working?

20

A. A day tour.

21

Q. Do you know what the hours would have been?

23

A. Tours have slightly changed, but basically the hours would be 7 a.m. to 5 p.m.

25

Q. At that time, were you working in

17

1 Occhino

2 | the 3rd Squad?

3 A. Yes.

4 Q. Do you recall where you reported  
5 to work on that day?

A. Did I report?

7 Q. Where you reported to work.

8 A. The 3rd Squad.

9 Q. Where was it located at that  
10 time?

A. 214 Hillside Avenue.

12 Q. Did you have an assignment for  
13 that day?

14                   A.         I probably had many assignments  
15                   for that day.

16 Q. Were you given assignments for  
17 that day, a particular time of that day?

18                   A.         Again, I don't recall. I could  
19                   only assume.

MS. NAPOLETANO: Don't assume.

21 Q. Were you working with anybody  
22 else that day?

23                   A.         I worked probably with many  
24                   people that day.

Q. Did you keep a memo book at that

18

1 Occhino

2 time?

3 | A. No.

4 Q. Did you keep any daily records?

5 A. I don't recall.

Q. Have you reviewed any documents

7 in order to prepare for this deposition today?

8 A. Yes.

9 Q. What documents did you review?

10 A. It was a copy of the letter that  
11 I wrote for and at Internal Affairs.

12 Q. Do you have a copy of that letter  
13 with you today?

14 A. No.

15 MR. FOGELGAREN: Counsel, have we  
16 been provided with that?

17 MS. NAPOLITANO: Can I go off the  
18 record for a second?

19 MR. FOGELGAREN: Yes.

20 (Discussion off the record.)

21 MR. WEINGARD: Before we go any  
22 further, I'd like to just make a record  
23 entry indicating that the reason that  
24 I'm appearing today is because of Judge  
25 Tomlinson's ruling, along with Judge

1

Occhino

2

Spatz' affirmance of that ruling, that  
3 apparently if we proceed by not showing  
4 up, we do so at our own peril.

5

If that's the case, I had no  
6 choice but to follow the judge's  
7 directive and not put my client at  
8 peril. So I am here. I am reluctantly  
9 here. I don't want to be here. We  
10 still believe my client has complete and  
11 absolute immunity in connection with  
12 this matter. But nevertheless, given  
13 this unusual position taken by the  
14 magistrate judge, I have no options  
15 except to be here.

16

Q. Did you review any other  
17 documents aside from what you've mentioned?

18

A. No.

19

Q. Other than with the county  
20 attorney, did you have any discussions with  
21 anybody at the Nassau County Police Department  
22 about your testimony you were going to give at  
23 this deposition?

24

A. There was another person in the  
25 room.

1

Occhino

2

MS. NAPOLITANO: It was an intern

3

in the county attorney's office.

4

Q. I am talking about did you have  
any conversations with anybody at the police  
department?

7

A. No.

8

MR. WEINGARD: Can we have a time  
frame on that, please?

10

Q. In the two weeks or month before  
just to prepare for this deposition.

12

A. No.

13

Q. On October 9, 2004, do you recall  
responding to a scene at Jericho Turnpike and  
Holland Avenue in Floral Park?

16

A. Yes.

17

Q. How did you become aware of  
having to respond to that area?

19

A. I don't recall.

20

Q. Were you in a vehicle at the  
time?

22

A. No.

23

Q. Do you know where you were when  
you first learned about a situation going on  
at that location?



1 Occhino

2 Police Department vehicle?

3 A. It would have been an unmarked  
4 detective car.

5 Q. Did that car have a number  
6 assigned to it?

7 A. The car would have a number  
8 assigned to it.

9 Q. Did the car have a police radio?

10 A. I don't recall.

11 Q. Did you have a police radio at  
12 that time on you?

13 A. I don't recall.

14 Q. Do you know if Detective Barnych  
15 had a police radio on him?

16 A. I don't recall.

17 Q. While you were in the car, were  
18 you in communication with anybody from the  
19 Nassau County Police Department?

20 A. I don't recall.

21 Q. Were you told what location to  
22 respond to?

23 A. I don't recall if I personally  
24 was told what location to respond to.

25 Q. Did you have any conversations

23

1 Occhino

2 with Detective Barnych at that time about

3 where you were going to?

4 A. I don't recall.

5 Q. At the time you were going to the  
6 location at Jericho Turnpike and Holland  
7 Avenue, do you remember what information you  
8 were given what you were going to respond to?

9 A. No.

10 MS. NAPOLITANO: Objection as to  
11 form.

12 MR. WEINGARD: I join in the  
13 objection.

14 MS. NAPOLITANO: You have to wait  
15 for me to object or not.

16 Q. Did there come a time that you  
17 arrived at the location of Jericho Turnpike  
18 and Holland Avenue?

19 A. Yes.

20 Q. When you got there, what did you  
21 observe?

22                   A.         A sedan, which was parked, and  
23                   Officer Vara.

24 Q. Were there any other police  
25 vehicles at that location, other than yours?

24

1 Occhino

2 A. I don't recall.

3 Q. Did you see any other members of  
4 the Nassau County Police Department other than  
5 Officer Vara when you first got there?

6                   A.         When I first got there, I don't  
7                   recall.

8                   Q.         Did you see anybody else outside  
9                   of the sedan other than Officer Vara?

10 MS. NAPOLITANO: Objection to  
11 form.

12 You can answer.

MR. WEINGARD: Join in it.

14                   A.         It was a public corner, a public  
15                   street.

16 Q. Did you see anybody else besides  
17 Detective --

18 A I don't recall.

19 O -- Vara?

20 MS. NAPOLITANO: Let him finish  
21 his question.

22 Q. Did you see anybody else in the  
23 street other than Officer Vara?

34 A I don't recall.

35 | Q Did you look to see if anybody

25

1

Occhino

2

was in the sedan at that time?

3

4

A. I did not see anybody in that sedan at that time.

5

6

Q. Did you leave your car at that time?

7

8

MS. NAPOLITANO: Objection to form.

9

You can answer.

10

11

A. At sometime during the time I was there I would have, and I did, leave my car.

12

Q. Where did you go?

13

14

A. To the vicinity of Jericho Turnpike and Holland -- I believe it's Avenue.

15

16

Q. Did you arrive at the vicinity of Jericho Turnpike and Holland Avenue?

17

A. Yes.

18

Q. Outside the car?

19

A. Yes.

20

21

Q. Do you recall when you arrived at that area what you observed when you were outside of the car?

23

24

25

MR. WEINGARD: Excuse me for one moment. Have we established approximately what time this is taking

26

1

Occhino

2

place?

3

MR. FOGELGAREN: Okay. Let me

4

ask you this.

5

Q. What time did your car arrive at Jericho Turnpike and Holland Avenue?

7

A. I don't recall the time.

8

Q. Do you know how long you remained inside your car once the car arrived?

10

A. No.

11

Q. When you left your vehicle, where did you go from the vehicle physically?

13

A. To Jericho Turnpike and Holland.

14

Q. How far was that from where your vehicle was parked?

16

A. I don't know.

17

Q. When you got to Jericho Turnpike and Holland Avenue, did you observe anything at that time?

20

A. I observed a sedan parked facing west and Officer Vara.

22

Q. At that time, when you observed the sedan facing west, was anybody inside the sedan?

25

A. No.

27

1 Occhino

2 Q. Who was with you at that time,  
3 when you arrived at Jericho Turnpike and  
4 Holland Avenue?

5 A. Detective Barnych.

6 Q. Were there any other Nassau  
7 County police personnel at that location at  
8 that time?

A. I don't recall.

Q. Did you have a conversation with Officer Vara at that time?

A. I don't recall.

13 Q. Do you know if Detective Barnych  
14 had a conversation with Officer Vara?

15 A Yes, he did.

16 Q. Did you hear any part of that  
17 conversation?

18 A Yes, I did.

19 Q. Do you have a recollection of  
20 that conversation?

21 A. I recall a part of that  
22 conversation.

23 Q What do you recall?

24 A. I recall Officer Vara stating he  
25 heard a sound of something metal like hitting

28

1

Occhino

?

and/or striking the ground.

3

Q. Did you hear anything else about that conversation?

5

A. I possibly heard other things, but I don't recall the specifics of that conversation.

1

Q. Did anybody mention a gun at that location at that time?

10

A. I don't recall.

11

Q. Did Officer Vara state if any other police department personnel were at that location --

14

A. I don't recall.

1

Q. -- prior to you and Detective Barnych getting there?

1

A I don't recall.

19

Q. Did Officer Vara mention anything about a clip being recovered at that site?

30

MR. WEINGARD: Excuse me. Are we talking about the site where the gun was recovered or another site?

23

MR. FOGELGAREN: I'll rephrase that.

2

Q. You heard Officer Vara mention he

29

1 Occhino

2 heard the sound of something metal like  
3 striking the ground; is that correct?

A. That's what I recall.

Q. Did he tell you where that was?

A. It was not at Jericho Turnpike.

I believe it was at and/or near a driveway of  
a private home within that vicinity.

9 Q. Did he tell you which private  
10 home it was?

11                   A.         I don't recall the specifics of  
12                   what he said.

13                   Q.         Do you know if he pointed out a  
14                   particular private home at that time, as to  
15                   where he heard the sound of something metal  
16                   like striking the ground?

17 A. Pointed out to who?

18 Q. To you.

19 A. I don't recall.

20 Q. Do you know if he pointed a  
21 private home to Detective Barnych at that  
22 time?

A. I don't recall.

Q. How long did you remain at the vicinity of Jericho Turnpike and Holland

30

1

Occhino

2

Avenue?

3

A. I don't know.

4

Q. After this conversation between Officer Vara and Detective Barnych took place, what happened after that?

7

8           between Officer Vara and Detective Barnych at  
9           Jericho Turnpike, Detective Barnych and I  
10          ended up by foot at a driveway of a private  
11          home, which I believe was on the side street,  
12          which I believe was Holland Avenue. It was a  
13          short walking distance from Hempstead -- not  
14          Hempstead Turnpike, excuse me, Jericho  
15          Turnpike.

1

Q. Why did you go to that location at time?

18

A. Because obviously that was the scene.

20

Q. Did Officer Vara point that location out to you?

2

A I don't know who pointed it out.

2

Q. Do you recall what street address  
that that driveway was located on Holland  
Avenue?

31

1 Occhino

2 | A. No.

3                   Q.         What did you do when you got to  
4                   that driveway?

5 A. I just stood there.

6 Q. When you went to that driveway,  
7 who went with you?

8 A. Detective Barnych.

9 Q. Where on the driveway did you  
10 stand?

11 A. I don't recall specifically  
12 where.

13 Q. Were there any cars in the  
14 driveway?

15 A I don't recall.

16 Q. Where did Detective Barnych go at  
17 that time?

18 A In and about the driveway.

19 Q. Were you observing what Detective  
20 Barnych was doing when he went in and about  
21 that driveway?

22 A. I don't recall.

23 Q. Was there anybody else at that  
24 driveway at that time besides yourself and  
25 Detective Barnych?

32

1 Occhino

2 A. Yes.

3 Q. Who was there?

4                   A.         There were uniform police  
5                   officers.

6 Q. How many?

A. I don't recall.

8 Q. Do you recall from what  
9 department they were from?

10                   A.         There were Floral Park police  
11                   officers there, and I recall there being  
12                   Nassau County police officers.

13 Q. Did you have a conversation with  
14 any of those uniform police officers?

15 A. I don't recall.

16 Q. Do you know if any of those  
17 uniform police officers said anything to you?

18                   A.         I do remember also Detective Mike  
19                   Fannon being there. I may or may not have had  
20                   a conversation with him. I don't recall  
21                   specifics.

22 MR. WEINGARD: Can we clarify as  
23 to whether Fannon is with one department  
24 or the other?

25 MR. FOGELGAREN: I was just about

1

Occhino

2

to ask.

3

Q. Detective Fannon, do you know

4

where he was assigned to at that time?

5

6

A. Yes, Nassau County Police

Department, the Crime Scene Unit.

7

Q. At that point in time, did you

8

have an understanding of what occurred

9

previously at that location at Jericho

10

Turnpike and Holland Avenue?

11

A. At the time of?

12

Q. You were in the driveway.

13

MS. NAPOLITANO: Objection to

14

form.

15

If you understand, you can

16

answer.

17

MR. WEINGARD: I join.

18

THE WITNESS: Answer it?

19

MS. NAPOLITANO: If you

20

understand the question, you can answer.

21

A. I had a basic understanding.

22

Q. What was your understanding at

23

that time?

24

A. That a car stop was made by 3rd

25

Precinct uniform, and a subject from the car

34

1

Occhino

2

ran away.

3

Q. Do you know who provided that information to you?

5

A. To me specifically? No.

6

Q. Do you know if that information was provided to Detective Barnych?

8

A. Sure.

8

Q. Do you know who provided that information to him?

11

A. I can say Police Officer Vara would have provided information regarding that incident.

14

Q. Was Officer Vara one of the officers who made the car stop?

1

MR. WEINGARD: Objection as to form. There's no indication that there was more than one.

10

A. Yes.

20

Q. Did he tell you that?

2

A T don't recall.

27

Q. Did Officer Vara indicate who else was involved, which other uniform officers were involved, in the initial car stop?

35

1 Occhino

A. I don't recall.

3 MR. FOGELGAREN: It's 11:00. Can  
4 we try to call Judge Tomlinson?

5 MS. NAPOLITANO: Yes.

6 (Discussion off the record.)

7 (Recess taken.)

10 (Record read.)

14 Q. Did you have any conversations  
15 with Detective Fannon when you were in that  
16 driveway?

17 A. I don't recall.

18 Q. Do you know if Detective Barnych  
19 had any conversations with Detective Fannon?

20 MR. WEINGARD: How does he spell  
21 that name?

MR. FOEGELGAREN: Which one?

23 MR. WEINGARD: Fannon.

24 MR. FOGELGAREN: F-A-N-N-O-N.

A. They spoke.

1

Occhino

2

Q. Did you hear the conversation or  
parts of the conversation?

4

A. I don't recall.

5

6

Q. Do you have a recollection of  
some substance of that conversation?

7

A. No.

8

9

Q. Did you speak with any of the  
uniform officers present at that driveway?

10

A. I don't recall.

11

12

13

14

Q. Was there anybody else, beside  
uniform police officers or other Nassau County  
Police Department officers, on that driveway  
at that time?

15

16

MR. WEINGARD: You're talking  
about both detectives and uniforms?

17

18

19

Q. Anybody else besides police  
personnel from Nassau County or Floral Park,  
anybody else?

20

A. Civilians?

21

MR. FOGELGAREN: Yes.

22

23

A. I don't believe so, when I was  
there.

24

25

Q. How long were you at that  
driveway for?

37

1

Occhino

?

A. I don't recall.

3

Q. What did you do while you were at that driveway?

5

A. Not much.

6

Q. Did you learn anything else about what had occurred at that site?

8

A. Again, I learned a subject ran away on foot through the driveway towards the rear of the house and through and/or over some type of fence.

12

Q. Did you see a fence near that driveway?

14

A. I believe there was a fence in  
the front of the driveway.

1

Q. Was that the fence that you learned that the subject had gone over?

18

A. No. I believe the fence he went over was in the rear of the driveway and/or the home.

2

Q. Did you learn if anything was recovered in that area by any police officer?

2

MS. NAPOLITANO: Objection to

3

form

2

A handgun.

1

Occhino

2

Q. Who informed you that a handgun  
was recovered at that area?

4

A. I saw a handgun.

5

Q. Where did you see the handgun?

6

A. In the driveway of the home we  
are referring to.

8

Q. Were there any cars or other  
vehicles in that driveway at that time?

10

A. I don't recall.

11

Q. Was Officer Buonora at that  
location at that time?

13

A. I don't recall.

14

Q. Did you learn if Officer Buonora  
had been at that location previous to you  
arriving that day?

17

MR. WEINGARD: Objection as to

18

form.

19

A. I don't recall.

20

Q. Did you see Officer Buonora at  
any time from when you had arrived in the  
vehicle at Jericho Turnpike and Holland Avenue  
up until the point in time when you arrived at  
the driveway?

25

A. I don't recall seeing Officer

39

1 Occhino

2 Buonora.

3 Q. Did you hear Officer Vara mention  
4 Officer Buonora?

5 A. I don't recall.

6 Q. Where exactly did you see this  
7 handgun?

8           A.       When you're facing the home, the  
9           driveway is to the left of the home. The gun  
10          was on the ground in the driveway. I don't  
11          recall the specifics or the logistics of  
12          exactly where it was, but it wasn't in the  
13          very rear of the driveway, and it wasn't in  
14          the front of the house. It was somewhere in  
15          the middle, give or take.

16 Q. Had any police officer secured  
17 that handgun?

18                   A.         Again, I saw it on the ground. I  
19                   don't recall.

20 Q. Did you have a conversation with  
21 anybody at that driveway with regard to that  
22 handgun?

23                   A.         I don't recall any conversations  
24                   or specifics.

Q. Do you recall what type of

1

Occhino

2

handgun it was?

3

A. No.

4

Q. You don't know what caliber

5

handgun it was?

6

A. No.

7

MR. WEINGARD: Are we talking

8

about did he know at that time, or does

9

he know now?

10

Q. At that time, did you know what

11

caliber the handgun was?

12

A. I don't recall.

13

Q. At that time, did you know what

14

make the handgun was?

15

A. No.

16

Q. What was the closest you got to

17

that handgun at that site?

18

A. I can't give you precise  
measurements, a few feet.

19

Q. Did you observe anything about  
that handgun at that site?

20

A. I don't recall.

21

Q. Did you ever look at that handgun  
to see if you could see a serial number on it?

22

A. I did not, no.

23

1

Occhino

2

Q. Do you know what color it was?

3

A. No.

4

Q. The fence that you described  
being in the back of the home, how far was the  
gun from that fence?

5

A. I don't know.

6

Q. Do you know if it was more than  
10 feet away from that fence?

7

MR. WEINGARD: Objection as to  
form.

8

A. I don't know. It's possible.

9

Q. Did you see anything else at that  
driveway?

10

MS. NAPOLITANO: Objection as to  
form.

11

You can answer.

12

A. I don't recall.

13

Q. On that premises, did you go  
anywhere else on that premises other than the  
driveway?

14

A. I would have went to the front of  
the house, the sidewalk.

15

Q. Did you have any particular  
assignment at that time being at that house?

1

Occhino

2

A. No. Basically my assignment  
would be assisting, would be if Detective  
Barnych asked me to do something for him, I  
would do it.

6

7

Q. Was there a police officer in  
charge of that location?

8

A. Possibly.

9

MR. WEINGARD: Excuse me. At  
what time are we speaking of?

11

12

13

Q. When you were in the driveway, do  
you know if there was a police officer who was  
in charge of that area?

14

15

A. I don't know who would be in  
charge of that driveway.

16

17

18

Q. Did Detective Barnych give you  
any instructions as to what to do while you  
were at that location?

19

20

A. I don't recall him giving me any  
instructions at all.

21

22

Q. Other than seeing that handgun,  
anything else that you noted?

23

24

MS. NAPOLITANO: Objection as to  
form.

25

You can answer.

43

1 Occhino

MR. WEINGARD: Join in it.

A. I may have. I don't recall.

4 Q. Did you see an ammunition clip at  
5 that location?

6 MS. NAPOLITANO: Objection as to  
7 form. At the driveway?

MR. FOGELGAREN: At the driveway.

11 A. I don't recall.

12 Q. Did you see an ammunition clip  
13 anywhere in proximity to that house where the  
14 driveway was?

15                   A.         I recall seeing an ammunition  
16       clip. To my best recollection, it was on  
17       Jericho Turnpike.

18 Q. Did you see that ammunition clip  
19 before you arrived at the driveway?

20 A. Yes.

21 Q. Where was that ammunition clip  
22 when you first saw it?

23                   A.         To my best recollection, it was  
24                   on Jericho Turnpike, a little bit west of  
25                   Holland Avenue on or near the curb.

1

Occhino

2

MR. WEINGARD: Can I have that  
answer read back, please.

4

(Record read.)

5

Q. Was it in proximity to a vehicle?

6

A. Yes.

7

Q. What vehicle?

8

A. A sedan, I believe it was four  
door. It would have been the subject's  
vehicle.

11

Q. Did somebody point that  
ammunition clip out to you, or is this  
something that you observed on your own?

14

A. I don't recall. It could be one  
or both of those things you just said.

16

Q. Did you do anything with respect  
to that ammunition clip after you first  
observed it?

19

A. No.

20

Q. Do you know if any other police  
officer did?

22

A. I don't know.

23

Q. Did you see any other police  
officers doing anything with regard to the  
handgun that you observed when you were in the

1 Occhino

2 driveway?

3 A. No. I just saw the handgun in  
4 and of itself on the ground.

5 Q. Did you make any notes while you  
6 were at that location?

7 A. I don't recall.

8 Q. Did you hear any radio  
9 transmissions while you were at that location?

10 MS. NAPOLITANO: I am going to  
11 object to the form. There was Floral  
12 Park and Nassau County Police there both  
13 with different radios, so do you want to  
14 be specific with him?

15 MR. FOGELGAREN: First I want to  
16 know whether he heard any radio  
17 transmissions, then I will ask him.

18 A. Police officers carry radios. I  
19 don't recall hearing any radio transmissions.

20 Q. Prior to arriving at the site of  
21 Jericho Turnpike and Holland Avenue, did you  
22 hear any radio transmissions with regard to  
23 what was going on at that location?

24 A. I don't recall.

25 Q. Did anything else happen in the

1 Occhino

2 vicinity of that driveway other than what  
3 you've mentioned up until now?

4 A. Did anything happen when?

5 Q. After you saw the handgun.

6 A. It's possible. I don't know.

7 Q. After you saw the handgun, do you  
8 recall if you had any conversations with any  
9 police officers at that site?

10 A. It's possible, but I don't recall  
11 any specific conversations.

12 Q. Did you eventually leave that  
13 area?

14 A. Yes.

15 Q. Do you recall when you left that  
16 area?

17 A. No.

18 Q. Did you make any notes as to when  
19 you left that area?

20 A. I don't recall.

21 Q. Do you know if you --

22 A. Me specifically?

23 MR. FOGELGAREN: Yes.

24 A. I don't recall.

25 Q. How did you leave that area?

1

Occhino

2

A. In a car.

3

Q. In what car did you leave the  
area?

5

A. In the same car that we drove  
there in.

7

Q. When that car arrived there, did  
you notify anybody at the Nassau County Police  
Department that you had arrived at the  
location?

11

A. Me specifically?

12

MR. FOGELGAREN: Yes.

13

A. I don't recall.

14

Q. Was Detective Barnych the only  
other person in the vehicle with you at that  
time?

17

MS. NAPOLITANO: At what time?

18

MR. FOGELGAREN: At the time you  
first arrived at the location in the  
car.

21

A. Yes. Me and Detective Barnych,  
it was just us two, that drove there in that  
car.

24

Q. Do you know if Detective Barnych  
notified anybody of arriving at that location?

48

Occhino

2 A. I don't know.

3                   Q.         Up until the point you left that  
4 location, do you recall anything else  
5 occurring at that scene?

6                   A.         Nothing specific that I can  
7                   recall, no.

8 Q. Was Officer Vara still at that  
9 scene when you left that scene?

A. I don't recall.

11 Q. Did you ever see Officer Buonora  
12 at that scene?

A. I don't recall seeing him there.

14 Q. While you were at that driveway  
15 at that location before you left, did you  
16 learn of any involvement of Officer Buonora in  
17 the events at that location?

18 MR. WEINGARD: Objection as to  
19 form.

A. I don't recall.

21 Q. Do you recall where you went to  
22 after you left that location?

23 A. Yes.

24 Q. Where did you go?

25 A. We went in the same car to a

1

Occhino

2

house in Nassau County. I believe it was  
Uniondale or Roosevelt or somewhere near that  
vicinity.

5

6

Q. When you say "we," who else was  
with you?

7

8

MR. WEINGARD: I was going to say  
did we establish that.

9

A. Detective Barnych and I.

10

11

12

Q. Was there anybody else with you  
from any police department besides Detective  
Barnych?

13

A. In the car?

14

MR. FOGELGAREN: Yes.

15

A. No.

16

17

18

MR. WEINGARD: I am going to stop  
for one moment. Where was it that they  
went; they went to a house?

19

20

MR. FOGELGAREN: In Nassau  
County, Uniondale or Roosevelt.

21

MR. WEINGARD: Thank you.

22

23

24

Q. Do you know how you were provided  
the information with this particular house in  
Nassau County in Uniondale or Roosevelt?

25

A. Detective Barnych had the

50

1

Occhino

?

information.

3

Q. Did Detective Barnych explain to you why you were going over there?

5

A. I knew and know that it was -- this house we were responding to was somehow in connection to this event that was being investigated.

C

Q. Did you learn if you were going to speak to somebody at that house?

11

MS. NAPOLITANO: Objection to

12

form.

13

You can answer.

14

A. I don't remember the specifics, but going to that house somehow would or hopefully lead to, directly or indirectly, the subject who fled the scene on foot.

18

Q. What information did you know at that time while you were in the car about the subject in question?

2

A. I don't recall his -- at that time, I don't recall what I knew about him, his pedigree. I don't recall.

?

Q. Do you know if a driver's license of the subject had been recovered at the scene

1

Occhino

2

at Jericho Turnpike and Holland Avenue?

3

A. I don't recall.

4

Q. Did you arrive at this house in  
Uniondale or Roosevelt?

5

A. Yes.

6

Q. Did any other cars, police cars,  
respond to that location at that time?

7

MR. WEINGARD: Before we take an  
answer, can we just get some sort of a  
time frame, what approximate time it was  
during the day?

8

MR. FOGELGAREN: Okay. I think I  
asked him earlier.

9

Q. Do you recall what time of day  
you were at that driveway on Holland Avenue?

10

A. No.

11

Q. Do you know how much time it took  
from the time you left that house up to the  
point in time you got to the house at  
Uniondale or Roosevelt?

12

A. No.

13

Q. Do you know whether it was  
daytime or nighttime?

14

A. It was daytime, early -- it could

1

Occhino

2

have been late morning into early afternoon  
perhaps. It was still during that day tour.

4

5

Q. When you arrived at this house in  
Uniondale or Roosevelt, what did you do?

6

7

A. We got out of the car. I believe  
we knocked on the door or rang a doorbell.  
Detective Barnych did speak to at least one  
person at that home.

10

Q. You also got out of the car?

11

A. Yes.

12

13

Q. Were you with Detective Barnych  
when he spoke to that person or persons?

14

15

A. I was with him. I don't know how  
close or far away, but I was obviously in that  
immediate vicinity.

17

18

Q. Did you hear any conversations  
that occurred between Detective Barnych and  
anybody who was at that house?

20

21

A. I was in earshot, and I don't  
recall what conversation -- specifics of the  
conversation that took place.

23

24

Q. Did Detective Barnych tell you  
any information he had learned?

25

A. He probably did, and I don't

1

Occhino

2

remember what information he learned and/or  
what he told me.

4

Q. How long did you remain at that  
house for?

6

A. I don't know.

7

Q. Besides these conversations that  
Detective Barnych had, do you recall anything  
else that occurred at that house?

10

A. No.

11

Q. Were you and Detective Barnych  
the only police officers who were present at  
that house at that time?

14

A. I don't recall.

15

Q. Did you speak to anybody else  
from the Nassau County Police Department,  
whether by telephone, radio, while you were at  
that house at Uniondale or Roosevelt?

19

A. It's possible. I don't recall.

20

Q. Do you know if Detective Barnych  
contacted or spoke to anybody with the Nassau  
County Police Department while he was at that  
location at the house in Uniondale or  
Roosevelt?

25

A. Again, it's possible, but I don't

1

Occhino

2

recall.

3

Q. Did you make any notes while you  
were at that house at Uniondale or Roosevelt?

4

A. I don't recall.

5

Q. Do you know if Detective Barnych  
made any notes?

6

A. I don't recall.

7

Q. Where did you go after you left  
that house in Uniondale or Roosevelt?

8

A. I don't recall.

9

Q. Do you recall doing anything else  
with respect to this investigation on that  
day?

10

A. It's possible that we did, him  
and/or I, but I don't recall.

11

Q. Did there come a time that day on  
October 9, 2004 that you returned to your  
station house?

12

A. Yes.

13

Q. Do you recall about what time  
that was?

14

A. No.

15

Q. Do you know when your tour ended  
that day?

1

Occhino

2

A. Give or take, it would be --

3

again, day tours have changed slightly over  
the years, give or take 5 p.m.

4

Q. Would you have arrived at your  
station house before 5 p.m. that day?

5

A. Yes, probably yes.

6

Q. Do you know if you worked any  
overtime that day?

7

A. No. I don't believe I did.

8

Q. When you arrived at your station  
house prior to the end of the tour, do you  
recall what you did on that day?

9

A. No. It probably was a lot of  
work, but I don't recall what.

10

Q. Did you have a usual custom and  
practice about that time of what you would do  
when you returned to the station house at the  
end of a day like that?

11

MS. NAPOLITANO: Objection to

12

form.

13

You can answer.

14

A. Well, I mean normally --

15

obviously every day is different, but it's a  
very, very, very busy squad, perhaps the

16

1

Occhino

2

busiest in Nassau County, so I could say with  
certainty that every day there are many things  
to do, many cases, many phone calls, many  
complainants.

3

Q. Would you have filled out any  
paperwork as to what you did on that tour that  
day?

4

A. No, other than if, as you asked  
before, if I possibly took any handwritten  
notes, that would be it, if I did.

5

Q. Did you keep a sheet of where you  
were at times on that day?

6

MS. NAPOLITANO: Objection to  
form.

7

You can answer.

8

A. A sheet? I don't know what that  
means, but like when you leave the station  
house or you get there, there's a blotter.  
You know, you sign out, if that's what you're  
referring to.

9

Q. What information is contained on  
the blotter?

10

A. The time that you're going out,  
that you're leaving, you know. For example,

1

Occhino

2

for example, 0900 Detective Occhino out to  
Hempstead.

4

Q. Would you have put on that

5

blotter when you left to go to that location  
at Jericho Turnpike and Holland Avenue in  
Floral Park?

7

A. Yes. But to clarify, it could be  
me and/or Detective Barnych.

10

Q. If Detective Barnych had  
indicated that he was going, would he have  
indicated that you were also going with him?

13

MS. NAPOLITANO: Objection.

14

MR. WEINGARD: Objection.

15

A. That's very possible.

16

Q. Did you learn if a person was  
arrested with regard to what had occurred at  
the Jericho Turnpike/Holland Avenue location?

19

MS. NAPOLITANO: Objection to  
form.

21

You can answer.

22

MR. WEINGARD: I join in it.

23

A. Obviously.

24

Q. When did you learn the person had  
been arrested?

25

58

1

Occhino

2

A. I don't recall.

3

Q. Did you do any paperwork with regard to the arrest?

5

A. No. If I may clarify, again, "paperwork," a broad term. Again referring to notes, if that counts, if I took notes, then the answer would be yes, but specifically the arrest paperwork, no.

10

11

Q. Do you know who the arresting  
sheriff was on that case?

1

13

Q. Do you know if Detective Barnych played some role with regard to the arrest?

1

1

1

MS

MS. NAPOLITANO: Objection.

1

1

1

what Detective Barnych did?

8

be -- how do I say? An integral part of the arrest process.

2

2

Q. Did he ask you for assistance with regard to anything with regard to the arrest?

?

A. I don't recall. I was not there

59

1 Occhino

2 for the arrest processing.

3 Q. Did you ever speak to Officer  
4 Vara about the case after the arrest was made?

To my best recollection, no.

6 C Did you ever speak to Officer

7 Buonora about this case after the arrest was  
8 made?

8 | Page

10 Q. Was Police Officer Vara ever  
11 interviewed about what had occurred at Holland  
12 Avenue/Jericho Turnpike in Floral Park?

13 MR. WEINGARD: Objection.

14 MS. NAPOLITANO: Objection.

15 A. By who?

16 MR. FOGELGAREN: I'll rephrase  
17 it

18 Q. Were you present at any time when  
19 Officer Vara was interviewed with regard to  
20 the events that occurred at Jericho Turnpike  
21 and Holland Avenue at Floral Park on October  
22 9th of 2004?

23 MS. NAPOLITANO: Objection.

A. I don't understand that question.

25 (Discussion off the record.)

60

1 Occhino  
2 (Occhino Exhibit 1, Document  
3 Bates-stamped Nassau County 000001  
4 through 000016, marked for  
5 identification.)  
6 (Occhino Exhibit 2, Document  
7 Bates-stamped Nassau County 000355  
8 through 000358, marked for  
9 identification.)  
10 Q. I am going to show you what has  
11 been marked as Exhibit Occhino 1 (handing).  
12 MR. WEINGARD: May I have a  
13 moment to look this over before we  
14 start?  
15 MR. FOGELGAREN: Sure.  
16 (Counsel perusing document.)  
17 MR. WEINGARD: Thanks.  
18 Q. So you've taken a look at what's  
19 been marked as Plaintiff's Exhibit Occhino 1.  
20 Just look at the front page for a second. Can  
21 you identify the form of the document?  
22 MR. WEINGARD: I'm sorry. Was  
23 that Occhino 1 or Occhino 2?  
24 MR. FOGELGAREN: Occhino 1.  
25 MS. NAPOLITANO: What did you ask

61

1 Occhino

2 | him?

MR. FOGELGAREN: If he could

4 identify the form.

5                   A.         It's an arrest report, sometimes  
6                   called an 81.

7 Q. And this arrest report, who is it  
8 on; who is the subject of this particular  
9 arrest report?

10 A. Darryl T. Coggins.

11 Q. Do you know who would fill out  
12 the information for this arrest report?

13 MS. NAPOLITANO: Objection to  
14 form.

15 MR. FOGELGAREN: Strike that.

16 Q. Do you know who filled out the  
17 information for this particular arrest report?

18 A May I look at it?

31 A Detective Barnych.

22 Q. Going to the second page of the  
23 report, it's marked page 2. It's also  
24 Bates-stamped Nassau County 000002. Do you  
25 see that?

62

1 Occhino

2 | A. Yes.

3 Q. In the middle of the page there's  
4 the word "testimonials."

5 A. (Witness nodding.)

6 MS. NAPOLITANO: Say yes.

7 A. Yes.

8 Q. Were you familiar with part of  
9 the form labeled "testimonials"?

A. Yeah, sure.

11 Q. What information is to be  
12 recorded in that section of the form?

13                   A.         Who is involved with the arrest  
14                   and/or the case.

15 Q. Do you know who filled that  
16 portion out?

17 A. No. I didn't.

18 Q. Have you ever seen this prior to  
19 today?

A. Possibly. I don't recall.

21 Q. Now, there's an arresting  
22 detective listed: is that correct?

23 A Yes

34 | 0 Who is that?

35 | A Alexander Barnych.

63

1 Occhino

2 Q. The defendant is also listed  
3 there. Is there any reason for that?

4                   A.         That's normal. It's supposed to  
5                   be that way.

6 Q. Who are supposed to be listed in  
7 the testimonial section?

8                   A.         People, persons, involved in the  
9                   Case.

Q. In this arrest report, who decided who would be included in this testimonial section?

13 MS. NAPOLITANO: Objection.

14 You can answer.

15 A. I don't know, not me.

16 Q. Are you listed in the testimonial  
17 section?

18 A. Yes.

19 Q. It indicates "nature of  
20 testimony." It says, "Responded to scene,  
21 assisted in interviews with PO Vara and  
22 remaining witnesses/passengers of subject  
23 auto." Do you see that?

24 A. Yes.

Q. Do you recall assisting in an

1

Occhino

2

interview of Police Officer Vara at that  
scene?

4

A. I was there when he was speaking,  
so it's how you define that. But  
specifically, I don't recall.

7

Q. Do you recall if you asked him  
any questions, if you asked Officer Vara any  
questions?

10

A. I don't recall.

11

Q. Did you say anything to Officer

Vara at that time?

13

A. It's possible. I don't recall.

14

Q. Do you recall assisting in  
interviews of the remaining witnesses at that  
scene?

17

A. No.

18

MR. WEINGARD: Objection as to

19

form.

20

A. No.

21

Q. Do you recall assisting in  
interviews of the passengers of the subject  
auto at that scene?

24

A. I don't even think they were  
there when I got there.

25

65

1 Occhino

2 Q. I am going to show you what has  
3 been marked as Occhino 2 and ask if you can  
4 identify this document, which is four pages,  
5 and it's marked with Nassau County Bates stamp  
6 000355, 000356, 000357 and 000358?

A. I'm sorry?

Q. Can you identify that document?

9 | A. Yes.

Q. What is it?

11                   A.         It's the letter that I wrote to  
12                   the Internal Affairs Unit regarding this case.

13 Q. This is a four-page document; is  
14 that correct?

15 A. Yes.

Q. And the handwriting in this document. is that your handwriting?

18 A. Yes, sir.

19 Q. Is that your handwriting on the  
20 entire document?

21                   A.         Well, on the last page there's a  
22                   couple of words or -- you know, that's not me  
23                   (indicating). But yeah, for the most part,  
24                   yes.

25 O. Did you sign the document?

1

Occhino

2

A. Yes.

3

Q. You signed it on what page?

4

A. I signed it on page 4, and I  
initialaled it on -- I initialled it on page 1,  
page 2, page 3.

7

Q. Do you recall what date you  
filled out this document?

9

A. If I refer to the document.

10

MR. FOGELGAREN: You may, please.

11

A. December 14, 2005.

12

Q. Do you recall where this document  
was filled out?

14

A. At the Internal Affairs Unit,  
which is at police headquarters.

16

Q. Were you notified that you had to  
appear at the Internal Affairs Unit with  
regard to this matter at some point in time  
before December 14, 2005?

20

A. Of course.

21

Q. Do you recall how long before?

22

A. No.

23

Q. Do you know who notified you?

24

A. I don't recall.

25

Q. After you were notified and prior



1

Occhino

2

A. No.

3

Q. Did you speak to any other  
members of the police department about  
appearing in front of the Internal Affairs  
Unit prior to December 14, 2005?

7

A. I don't recall.

8

Q. Did you speak to Officer Vara  
about it?

10

A. No.

11

Q. Did you speak to Officer Buonora  
about it?

13

A. No.

14

Q. Up to December 14, 2005, had you  
ever had any conversations with Officer Vara  
about the incident at Jericho Turnpike and  
Holland Avenue in Floral Park on October 9,  
2004?

19

MR. WEINGARD: Objection, if he's  
going to talk about contact. No  
objection if he's just being asked  
whether he had a conversation.

23

Q. Did you ever have a conversation  
with Officer Vara?

25

A. Any kind of conversation?

1

Occhino

2

Q. About this incident.

3

A. I don't recall ever having a  
conversation with him about this incident.

4

Q. Same question with regard to  
Officer Buonora.

5

A. Same answer. I don't recall.

6

MS. NAPOLITANO: Let him finish.

7

Q. Who did you speak to at the  
Internal Affairs Unit?

8

A. I don't recall.

9

Q. Who was with you when you  
appeared before the Internal Affairs Unit?

10

A. A union rep would be with me.  
That's just how it is. I don't recall who it  
was. And I don't recall if a lawyer came also  
or not, but a union rep was with me.

11

Q. Do you recall who from the  
Internal Affairs Unit saw you at that time?

12

A. I could only say it was a  
detective sergeant.

13

Q. Was it just one member of the  
Internal Affairs Unit that saw you?

14

A. It could have been two, so I  
don't recall.

15

1

Occhino

2

Q. Were you questioned about what  
occurred on October 9, 2004 at that time, on  
December 14, 2005?

5

A. Of course, yes.

6

Q. The statement that you wrote, was  
that prepared before, during or after the  
questioning by the Internal Affairs Unit?

9

A. To my best recollection, it was  
prepared after the questioning by the Internal  
Affairs Unit.

12

Q. Did you see the Internal Affairs  
Unit on one occasion or more than one  
occasion?

15

A. I'm sorry. I'm thinking.

16

MS. NAPOLITANO: You're allowed  
to think.

18

A. To my best recollection, it was  
once.

20

Q. I am referring to page 1 of  
exhibit Occhino 2. You state that Detective  
Barnych was responsible for catching cases on  
that tour. What does the term "catching  
cases" mean?

25

A. Okay. I'll explain, and just

1

Occhino

2

please make note that that varies also.

3

Q. Well, let me ask you this. With regard to this particular matter, could you explain what "catching cases" meant?

4

A. Yes. Cases, events that are sent to the squad to be a squad case, a detective, possibly one, will be assigned for a particular day, to assign those cases to him for that day or for that tour. So if Detective Barnych was catching cases on a certain day, any case sent up to the squad to be investigated would be assigned to Detective Barnych.

5

Q. There's a paragraph on page 1 which starts with the number 3. It's a little more than halfway down. Do you see it?

6

A. Yes.

7

MR. WEINGARD: Which exhibit?

8

MR. FOGELGAREN: Again, Occhino

9

2.

10

Q. It says, "At approximately 8:30 a.m. I accompanied Detective Barnych from the 3rd Squad to the incident location on Jericho Turnpike in Floral Park." Do you see that?

1 Occhino

2 A. Yes.

3 Q. Was that an accurate statement as  
4 to when you went to the location?

5 MS. NAPOLITANO: Objection.

6 You can answer.

7 A. Yes.

8 Q. The next line says that you  
9 learned that the incident which the suspect  
10 fled had occurred about four hours earlier; is  
11 that correct?

12 A. Yes.

13 MR. WEINGARD: I am going to  
14 object to the form of the questions. If  
15 you're asking him whether or not he has  
16 a recollection based on a review of the  
17 document, that's one thing. If you ask  
18 him whether it's a correct statement,  
19 that's totally different.

20 Q. The information that you placed  
21 on this statement, the facts, where did you  
22 obtain those facts; was it from your personal  
23 recollection, did you review anything, did you  
24 speak to anybody?

25 MR. WEINGARD: Objection to the

73

1 Occhino

2 form of the question.

A. I don't recall.

4 Q. When you filled out this form,

5 the facts that you put on with regard to your  
6 recollections, did you believe them to be  
7 accurate at that time?

8 A. Yes.

9 Q. Do you believe them to be  
10 accurate now?

11 A. Yes.

12 Q. How did you learn that the  
13 incident --

14 MR. WEINGARD: I am going to  
15 continue my objection with regard to  
16 form. If you're asking him whether it  
17 refreshes his recollection, that's one  
18 thing. If you ask him whether or not  
19 it's accurate, it's a totally different  
20 thing. One is permissible, in my view,  
21 and the other is not.

22 MR. FOGELGAREN: Well, speaking  
23 objections also are not permissible  
24 during a deposition. You can note your  
25 objections.

1

Occhino

2

MR. WEINGARD: I am noting it.

3

MR. FOGELGAREN: I am just saying

4

the reasoning is what -- like I said,

5

speaking objections are not permissible.

6

Q. From what did you learn the

7

incident from where the suspect fled occurred

8

four hours earlier?

9

MS. NAPOLITANO: Objection to

10

form.

11

MR. WEINGARD: Join in it.

12

Q. You indicated on this form that

13

the incident from where the suspect fled

14

occurred four hours earlier. Did you mean it

15

occurred four hours earlier when you got to

16

the scene?

17

MR. WEINGARD: Objection as to

18

form.

19

MS. NAPOLITANO: Objection to

20

form.

21

You can answer.

22

A. Yes.

23

Q. How did you obtain that

24

information?

25

A. I don't know.

1

Occhino

2

Q. At the time you filled out this  
statement, did you know where you got that  
information from?

5

A. I don't recall.

6

7

8

9

Q. Going to page 2, paragraph 4, you  
indicated that Officer Vara informed Detective  
Barnych of information about the stop; is that  
correct?

10

A. Yes.

11

12

13

Q. Was that based on a conversation  
that you heard between Detective Barnych and  
Officer Vara at that time?

14

15

MS. NAPOLITANO: Objection as to  
form.

16

MR. WEINGARD: Join.

17

A. Possibly. I don't recall.

18

19

Q. In that paragraph, the initials  
SFST are used. Do you see that?

20

A. Yes.

21

Q. What does that stand for?

22

23

A. I believe it stands for  
standardized field sobriety test.

24

25

Q. Did you hear Officer Vara say  
anything at the site at Jericho Turnpike and

1

Occhino

2

Holland Avenue on October 9, 2004 with regard  
3 to a DWI investigation going on?

4

A. Right now at this moment, I  
5 recall I was within earshot when he spoke out  
6 loud to Detective Barnych. As I look at my  
7 statement here to recall, SFST was given by PO  
8 Vara to the subject that fled.

9

Q. The statement also, I think on  
10 the fifth line from the bottom, indicates that  
11 Detective Michael Fannon was of the Crime  
12 Scene Unit. Was that correct?

13

A. Yes.

14

Q. You also indicated a ring was  
15 recovered?

16

A. Yes.

17

Q. How did you learn that?

18

A. I don't recall.

19

MR. WEINGARD: I am going to  
20 object as to form.

21

A. I don't recall.

22

Q. Going to paragraph 6 on page 3,  
23 you stated that you had no involvement in the  
24 arrest of Darryl Coggins.

25

A. Correct.

1 Occhino

2 Q. In that same paragraph you also  
3 stated that you had no involvement in the  
4 arrest processing of Darryl Coggins; is that  
5 correct?

6 A. Correct.

7 Q. Did you ever speak to Darryl  
8 Coggins?

9 A. Never.

10 Q. Now, in paragraph 7 you stated  
11 that you were not subpoenaed by the district  
12 attorney for testimony in any grand jury  
13 proceedings against Darryl Coggins; is that  
14 correct?

15 A. Yes.

16 Q. Did you speak to any members of  
17 the district attorney's office with regard to  
18 the facts and circumstances of what occurred  
19 at Jericho Turnpike and Holland Avenue in  
20 Floral Park on October 9, 2004? And this is  
21 prior to the grand jury presentation, the  
22 initial grand jury presentation, after the  
23 arrest of Darryl Coggins.

24 A. I don't recall the time frame. I  
25 spoke to someone from the district attorney's

1 Occhino

2 office, but I don't remember when.

3 Q. Do you recall who you spoke to at  
4 the district attorney's office?

5 A. To my best recollection --

6 MS. NAPOLITANO: You know what  
7 he's asking you, right, what grand jury  
8 he's asking you about?

9 MR. FOGELGAREN: It wasn't a  
10 particular grand jury. I'll withdraw  
11 the question.

12 Q. You indicated you spoke to an  
13 assistant DA at some point in time; is that  
14 correct?

15 A. Yes.

16 Q. Do you recall when that was?

17 A. No.

18 Q. Do you recall if there was a  
19 subsequent grand jury convened to investigate  
20 what occurred on October 9, 2004?

21 A. Yes.

22 MS. NAPOLITANO: I am going to  
23 object.

24 MR. WEINGARD: I join in it.

25 Q. Did you speak to an assistant



1 Occhino

2 regard to this matter?

3 A. I recall sitting down with him  
4 and him asking me questions regarding this  
5 matter, and I recall him showing me some  
6 photos of the driveway where the gun was.

7 Q. Did he indicate to you what he  
8 was investigating at that time?

9 A. It's possible. I don't recall  
10 what he said specifically what he was  
11 investigating, but it was obvious that it  
12 involved this case.

13 Q. Do you know what he was  
14 investigating about this case at that time?

15 MS. NAPOLITANO: Objection to  
16 form.

17 You can answer.

18 A. There were police officers  
19 potentially that are in trouble, and he was  
20 investigating that.

21 Q. Do you know which police officers  
22 were in trouble?

23 A. It was PO Vara and/or PO Buonora,  
24 one or both.

25 Q. Did you have an understanding of

1 Occhino

2 what type of trouble Police Officer Vara might  
3 be in at that time?

4 A. I don't recall specifically what  
5 type of trouble he was in, no.

6 Q. Do you have any general  
7 recollection at that time of what type of  
8 trouble he might have been in?

9 A. I believe, to my recollection,  
10 there was a problem regarding the recovery of  
11 the gun.

12 Q. Did you understand what the  
13 problem regarding the recovery of the gun was?

14 MR. WEINGARD: That's pure  
15 speculation, object.

16 A. I don't recall.

17 Q. Do you know if Police Officer  
18 Buonora was being investigated at the time you  
19 spoke to Assistant DA James Clark?

20 A. I believe that it was PO Vara  
21 and/or PO Buonora.

22 Q. Do you know what about PO Buonora  
23 was being investigated at that time?

24 A. Not specifically, but again, I  
25 knew there was some sort of problem with the

1 Occhino

2 gun.

3 Q. At the time you spoke to  
4 Assistant DA James Clark, did you have any  
5 conversation about Officer Buonora with  
6 Assistant DA James Clark?

A. It's possible. I don't remember.

He asked me questions. I'm sure PO Buonora  
and PO Vara's name came up, but I don't  
remember specifically what he asked me.

Q. Occhino 2, Exhibit Occhino 2,  
your statement, was this statement written  
after you spoke to Assistant DA James Clark?

14                   A.           I don't remember. I don't  
15                   recall.

16 Q. At the time you wrote this  
17 statement, did you have any knowledge of  
18 whether Detective Buonora had been involved in  
19 the events on October 9, 2004?

20 MR. WEINGARD: Objection.

THE WITNESS: PO Buonora?

22 MR. FOGELGAREN: Yes.

23 THE WITNESS: You said

"detective."

MR E

25 MR. FOGELGAREN: I'm sorry, PO

1 Occhino

2 Buonora.

3 THE WITNESS: Repeat the  
4 question, please.

5 MR. WEINGARD: Objection; calls  
6 for speculation.

7 Q. On October 9, 2004, did you have  
8 any information or any knowledge as to whether  
9 Police Officer Buonora was involved in the  
10 events on October 9, 2004 in Floral Park?

11 A. It's possible. I don't recall.

12 Q. Well, on your statement, December  
13 14, 2005, did you indicate anything about  
14 Police Officer Buonora's involvement?

15 A. I would have to --

16 MR. FOGELGAREN: Take a look.

17 MR. WEINGARD: I am going to  
18 object. The witness has testified that  
19 he doesn't know whether he prepared that  
20 before or after speaking with the ADA.  
21 So unless you can tell us when he spoke  
22 to the ADA, it doesn't have relevance.

23 MR. FOGELGAREN: We will decide  
24 whether or not it has relevance at some  
25 point in time.

1 Occhino

2 MR. WEINGARD: And also I object  
3 as to form.

4 A. On October 9th?

5 Q. Well, the report is dated  
6 December -- yes.

7 A. But on October 9th I don't recall  
8 seeing Officer Buonora, seeing him there.

9 Q. I am just asking about what is  
10 included in your statement, that's all. I was  
11 asking if there was anything included about  
12 Detective Buonora in your statement?

13 A. Buonora?

14 MR. WEINGARD: Continue the  
15 objection, please.

16 A. I don't see his name, unless I'm  
17 making an error. I don't see his name  
18 anywhere.

19 Q. After October 9, 2004, did you  
20 have any role in investigating the incident on  
21 October 9, 2004 at Jericho Turnpike in Floral  
22 Park and Holland Avenue?

23 MS. NAPOLITANO: Objection to  
24 form.

25 You can answer.

1 Occhino

2 MR. WEINGARD: I join in it.

3 | A. No.

4 Q. Did you learn what happened to  
5 the prosecution of Darryl Coggins?

6                   A.         No.     Do you mean what he was  
7 charged with?

8 Q. Do you know what he was charged  
9 with?

10                   A.         No. I would have to refer  
11                   (indicating).

12 Q. Do you know what ever happened as  
13 a result of those charges; do you know if he  
14 was ever convicted, acquitted?

A. I could only speculate.

16 MS. NAPOLITANO: Don't speculate.

Q. I am not asking you to speculate.

18 A. No., no.

19 MR. FOGELGAREN: I have no  
20 further questions at this time.

21 MS. NAPOLITANO: Are you keeping  
22 it open?

23 RQ MR. FOGELGAREN: Yes. Obviously,  
24 I also want to get the entire file of  
25 the Internal Affairs Unit with regard to

1

Occhino

2

the investigation of this case, and if  
there's anything at that time that we  
see, we will let you know.

4

5

MS. NAPOLITANO: Mr. Weingard, do  
you have questions?

7

8

MR. WEINGARD: Give me one  
minute, but I think I'm okay.

9

10

No, thank you. No questions at  
this time.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

(Time noted: 12:44 p.m.)

1

Occhino

2

A C K N O W L E D G M E N T

3

4

STATE OF NEW YORK )  
COUNTY OF )  
                      :  
                      ss

5

6

I, NICHOLAS OCCHINO, hereby certify  
that I have read the transcript of my  
testimony taken under oath in my deposition of  
February 25, 2010; that the transcript is a  
true, complete and correct record of my  
testimony, and that the answers on the record  
as given by me are true and correct.

14

15

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NICHOLAS OCCHINO

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Signed and subscribed to before  
me, this                      day  
of                             , 2010.

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Notary Public, State of New York

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2 -----I N D E X-----  
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3 WITNESS EXAMINATION BY PAGE  
4 NICHOLAS OCCHINO MR. FOGELGAREN 4  
5  
6

7 -----DOCUMENT REQUEST-----  
8

PAGE 85 Entire file of Internal Affairs  
9 Unit  
10

11 -----INFORMATION TO BE FURNISHED-----  
12

PAGE 10 Date received Associate's degree  
13 from Nassau Community College  
14

15 -----EXHIBITS-----  
16

OCCHINO FOR I.D.  
17

1 Document Bates-stamped Nassau  
18 County 000001 through 000016 60  
19 2 Document Bates-stamped Nassau  
20 County 000355 through 000358 60  
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22 (Counsel retained exhibits.)  
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## C E R T I F I C A T E

STATE OF NEW YORK )

) S S . :

COUNTY OF NASSAU )

I, JENNIFER FUCHS, a Notary

Public within and for the State of New  
York, do hereby certify:

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

20 IN WITNESS WHEREOF, I have  
21 hereunto set my hand this 7th day of  
22 March, 2010.

Juniperus Flachs

JENNIFER FUCHS